

EMPLOYEE MISCLASSIFICATION TASK FORCE

2nd REPORT - LEGAL COMMITTEE

T. C. A. §50-6-919(b)

(9) Whether improvements are needed to facilitate the filing of complaints and identify potential violators, including, but not limited to, soliciting referrals and other relevant information from the public.

RESPONSE: The Legal Committee submits three recommendations for facilitating the filing of complaints and for the improvement in identifying potential violators. The main recommendation for facilitating the filing of complaints is effective enforcement. Once compliant construction contractors witness effective enforcement by the Department of Labor & Workforce Development ("Department") they will have more confidence in knowing that if they report a contractor who is misclassifying its workers that something will actually be done about it and that knowledge will generate complaints from those compliant contractors. The Department's current legal authority to penalize non-compliant contractors is limited to contractors found to be not carrying workers' compensation insurance and not paying their unemployment insurance premiums because they have misclassified their workers as independent contractors or they have worked their employees "off the books". The Department currently has no statutory authority to issue stop work orders to non-compliant contractors, nor does it have the authority to assess monetary penalties against contractors who commit workers' compensation insurance premium fraud. Until the Department is granted enhanced statutory authority to penalize and/or stop the work of non-compliant contractors, it is doubtful that the many compliant contractors will bother to file a complaint.

The second recommendation is utilization of effective technology to ferret out potential non-compliant contractors. There are software applications currently available that will cross-reference several different state and associational databases (such as National Council on Compensation Insurance NCCI) to permit an investigator to hone in on employers who are likely engaging in employee misclassification. Such technology would enable an investigator to be instantly notified via e-mail if and when a workers' compensation insurance policy has lapsed or non-renewed. It would also allow investigators to monitor contractors for continuous coverage or allow them to monitor every construction classification. This will help the Department's investigators to work more efficiently and to cover more territory.

On July 16, 2012, a meeting was held at the Department of Labor in which three fraud detection vendors presented their product to a dozen attendees representing each of the Task Force committees. The vendors who presented were Thomson Reuters' CLEAR, Risk Metrics Corporation, and Insurance TechKNOWLEDGEy. The cost for a fraud detection system will depend on which vendor, if any, is chosen. One vendor, Insurance TechKNOWLEDGEy, has offered to provide its service to the Department of Labor and the State Contractor Licensing Board free of charge. The cost for such a system, if any, will have to be weighed against the improved efficiency and greater coverage capabilities that it will provide our investigators.

The third recommendation is a public outreach and awareness campaign. The goal of such a campaign would be to educate the workers who may be employed or may be come employed by a non-compliant employer. Suggestions for getting information to these workers are:

- a) placing informational pamphlets in the Tennessee Career Centers and at job fairs in both English and Spanish;
- b) media ad campaigns in English and Spanish;¹
- c) public service announcements in English and Spanish; and
- d) providing educational information regarding these practices via social media.

(10) Changes in the law, if any, that need to be made in order to ensure that agencies represented by task force members investigating the failure of employers to properly classify individuals as employees under their own statutory or administrative enforcement mechanism have the authority to refer a matter to other participating agencies for assessment of potential liability under the other agencies' relevant statutory or administrative enforcement mechanisms.

RESPONSE: No changes in the law are necessary. Nothing currently in the law prohibits agencies represented by task force members from referring a matter to other participating agencies for potential liability under the other agencies' statutory or administrative enforcement mechanism.

(13) Any other issues relative to employee misclassification in the construction industry.

RESPONSE: The Legal Committee recommends that the Department and other task force member agencies contact the governmental agencies and attorney general offices in contiguous states to establish a referral process with them. This is needed due to the number of non-compliant companies working in Tennessee from other states. If they are breaking the law in Tennessee they are likely doing the same in their home state. In such cases, enforcement actions in home states along with Tennessee will create greater accountability.

¹ Cost will be a factor on how much, if any, of this will be doable.